

REMARKS

Reconsideration of the Office Action of July 27, 2007 is respectfully requested.

Claims 1-17 were pending in this application and have been rejected in the Office Action.

To summarize the claim changes made in this Amendment, claims 1, 3-10, 12-13 and 15 have been amended, claims 2, 11, 16 and 17 have been canceled and claims 18 and 19 have been added.

No new matter is considered to be introduced by these amendments.

Formalities

The Examiner has objected to the drawings as not clearly showing opening 17. Accompanying this Amendment are two replacement drawing sheets wherein in each of Figs. 1-4 the opening 17 is clearly presented. No new matter is considered presented with these drawing revisions as the original application fully supports the current replacement drawing set (e.g., see page 5, lines 24-26).

The Examiner has further objected to claims 5-9 and 13-15 because of the multiple dependencies of those claims. The claim amendments made herein to those claims is respectfully submitted to render non-applicable those objections. Also, as noted on page 2/2 of the original national stage transmittal document, no deposit account authorization was given to charge for excess/multiple dependent claims on the basis that a preliminary amendment was intended (in response to a triggering request for covering excess claim fees). However, the U.S. Patent and Trademark Office (USPTO) overlooked this clear statement during processing and charged the deposit account the claim fees thus removing the triggering event for filing a Preliminary Amendment. In an effort to expedite prosecution, Applicant is not now submitting a request to reverse the improper claim fee charge, but Applicant requests consideration of this improper processing (and hence the non-treatment of claims intended for preliminary amendment) be considered in any analysis as to whether Applicant has had a full and fair opportunity to present the desired claims before first Action. In other words, the objected to non-treated claims would have been addressed in a Preliminary Amendment were it not for the USPTO's improper processing, and thus

Applicant has lost an opportunity to have corrected claims considered on the merits in the first Office Action.

35 U.S.C. § 112 Rejection

As to claims 16 and 17, these claims have been canceled so as to render non-applicable the 35 U.S.C. § 112 rejection.

Novelty

In the present Amendment, claim 1 represents a rewriting of original claim 2 in independent form (i.e., current claim 1 includes the subject matter of original claims 1 and 2). In similar fashion, claim 10 represents a rewriting of claim 11 into independent format.

In the Office Action there is a brief discussion as to how the '421 publication was considered to anticipate original claims 2 and 11. The assertion that the '421 publication anticipates current claim 1 (former claim 2) and current method claim 10 (former claim 11) is respectfully traversed. That is, it is clear from paragraph [0035] to paragraph [0040] of the '421 publication, that the 421 publication does not disclose a piston for drawing medicament into said metering chamber and expelling medicament from said metering chamber as set forth in apparatus 1 and method claim 10.

The 421 publication discloses a volume-changing adjustment means which can obtain different sub-quantities 1'. The dosing chamber base (34) can be moved and adjusted relative to the dosing chamber wall (35) in order to change the volume of the dosing chamber (16). However, this is carried out by means of a screwing-action of the dosing chamber base (34), the latter has a threaded pin (38) on the spindle side. Clearly, this volume-changing adjustment means is not a disclosure of a piston for drawing medicament into said metering tube and expelling medicament from said metering tube.

This deficiency of the '421 publication relative to original claim 2 was also recognized during the International Stage of the present application wherein there was set forth the following in the Written Opinion:

“None of the cited documents (inclusive of WO 0226299 – a family member of the ‘421 publication) discloses or renders obvious the solution proposed in dependent claim 2 (the solution consisting in a piston for drawing medicament into the extendable/retractable metering tube and expelling medicament from the extendable/retractable metering tube); the fluid dispenser of D2 would required to many modifications in order to arrive at a dispensing apparatus according to claim 2. Consequently, the subject-matter of dependent claim 2 is new (Article 33(2) PCT) and inventive (Article 33(3) PCT).”

Accordingly, current claim 1 (and current method claim 10) are respectfully submitted to be novel relative to the ‘421 publication to Von Schuckmann.

Non-Obviousness

The volume-changing adjustment means disclosed in the ‘421 publication not only carries out a completely different function to the piston of the present application but, it also carries out that function in a completely different manner. Von Schuckmann does not disclose a piston which draws medicament into said metering tube and expels medicament from said metering tube. Further, as an example of the different arrangements of the two apparatuses, it is disclosed in paragraph [0040] of the ‘421 publication that the adjustment capability is stepless and is effected in the emptying position according to Figure 6. Therefore, movement of the dosing chamber base (34) can only be adjusted in this position – it is not moveable to draw medicament into the metering tube and subsequently expel.

Furthermore, as recognized by the International Search (see the above quotation), for the apparatus of Von Schuckmann to operate in the same manner as the present invention, a number of modifications would be required. Those modifications would not be routine and would, therefore, not be obvious to a person skilled in the art.

Applicants respectfully submit that the application as a whole stands in condition for allowance.

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Also, if any fees are due in connection with the filing of this Amendment, such as fees under 37 C.F.R. §§ 1.16 or 1.17, please charge the fees to Deposit Account 02-4300; Order No.033335R028.

Respectfully submitted,

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